

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Rocky J. Keehn
Appellant,

v.

Sarpy County Board of Equalization
Appellee

Case No: 12R 340

Decision Affirming Sarpy
County Board of Equalization

1. A Single Commissioner hearing was held on June 25, 2014, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Salmon.
2. Rocky J. and Vaiva R. Keehn (the Taxpayer) were present at the hearing.
3. Martin L. Becker, Appraiser for Sarpy County Assessor’s Office was present for the Sarpy County Board of Equalization (the County).
4. The Subject Property (Subject Property) is a rural residential parcel improved with a 3,600 square foot two story dwelling, with a legal description of: Lot 46, Prairie Ridge, Sarpy County, Nebraska.

Background

5. The Sarpy County Assessor assessed the subject property at \$478,796 for tax year 2012.
6. The Taxpayer protested this value to the Sarpy County Board of Equalization and requested an assessed value of \$448,000 for tax year 2012.
7. The Sarpy County Board of Equalization determined that the assessed value of the subject property was\$ 478,796 for tax year 2012.
8. The Taxpayer appealed the determination of the County to the Tax Equalization and Review Commission (the Commission).

Issues & Analysis

9. The Commission’s review of the determination of the County Board of Equalization is de novo.¹ “When an appeal is conducted as a ‘trial de novo,’ as opposed to a ‘trial de novo on the record,’ it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not

¹ See, Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).

been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal.”²

10. When considering an appeal a presumption exists that the “board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.”³ That presumption “remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.”⁴
11. The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.⁵
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
13. A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.⁷
14. The Taxpayer asserted that a fee appraisal had been completed on the Subject Property for refinancing purposes with an effective date of September 9, 2010. The Commission notes that the fee appraisal valued the Subject Property at \$450,000. The appraiser was not present to answer questions.
15. The actual value of real property for ad valorem purposes should indicate what a willing buyer would pay a willing seller on the open market for Subject Property on the date of assessment. The date of assessment in the current case is January 1, 2012. The actual value of real property may change from year to year based upon several economic factors. Other than the Taxpayer’s assertions, there was no evidence in that the Subject Property’s actual value did not change from 2010 to 2012. For the forgoing reasons, the Commission gives little weight to the fee appraisal.
16. The Taxpayer provided a copy of an article from the Omaha World-Herald published June 22, 2012. She asserted that the article stated that valuations in Sarpy County had not risen. The Commission gives little weight to the article.

² *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

³ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

17. The Commission notes on the Property record card that the Assessed Value on the Subject property was adjusted by the Sarpy County Board of Equalization for tax year 2011. Without the Board of Equalization adjustment, the Commission notes the Assessed Value decreased from 2009-2011 assessment dates.
18. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
19. The Taxpayer has not adduced sufficient, clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary and the decision of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decision of the Sarpy County Board of Equalization determining the value of the subject property for tax year 2012, is Affirmed.
2. The taxable value of the Subject property for tax year 2012 is:

Land	\$119,000
<u>Improvements</u>	<u>\$359,796</u>
Total	\$478,796
3. This decision and order, if no further action is taken, shall be certified to the Sarpy County Treasurer and the Sarpy County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.).
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.
5. Each Party is to bear its own costs in this proceeding.
6. This decision shall only be applicable to tax year 2012.
7. This order is effective on July 1, 2014.

Signed and Sealed: July 1, 2014

Nancy J. Salmon, Commissioner